IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 2588 OF 2007

Nitin Laxmanrao Jadhav Patil. ... Applicant.

V/s.

1. Madan Prataprao Bhosale,

2. The State of Maharashtra. ... Respondents.

Nitin Jamdar with V.V.Purwant for the applicant.

Shirish Gupte, senior counsel, i/b. Ajit J. Kenjale for respondent No.1.

S.S.Pednekar, A.P.P. for respondent No.2- State.

CORAM: V.C.DAGA, J.

DATED: 1st November 2007.

P.C. :

. Heard learned counsel for the applicant, learned counsel for respondent No.1- accused and learned A.P.P. for respondent No.2- State. Perused record.

2. The applicant, who is the original complainant has moved this application for cancellation of anticipatory bail so as to arrest the respondent No.1- accused Madan Prataprao Bhosale ("the accused" for short).

Factual Matrix :

3. The factual matrix giving rise to the present application, in short, is as under:

4. The applicant is permanent resident of Bopegaon and is also producer member of Kisanveer Satara Sahakari Sakhar Karkhana ("said Karkhana" for short) situated at Bhuinj, taluka- Wai, district- Satara.

5. The respondent No.1- accused is a sitting M.L.A. representing Wai constituency and is in the management of the said sugar factory since last about four years. The other co-accused are the supporters of the present accused. The applicant has contended that during the tenure of these accused, he had noticed various activities which were detrimental to the interest of the said Karkhana. Being interested person, he had put various questions in writing much before the annual general meeting seeking explanation from the Board of Directors of the said Karkhana headed by the present accused.

6. The annual general meeting of the said Karkhana was scheduled on 28th June, 2007 in the premises of the Karkhana. Present accused was present in the said meeting along with his supporters. It is

the contention of the applicant that at the time of meeting every care and prosecution was taken by the accused and his supporters to prevent him from raising any question in the said meeting. Even then, in the interest of the said Karkhana as well as in the interest of the members of the said Karkhana, the applicant tried to raise some issues. As a result thereof, the present accused, who is Chairman of the said Karkhana, started abusing the applicant and the co-accused Satish Bhosale man-handled him. Another co-accused viz. Gajanan Prataprao Bhosale, who is real brother of the present accused, immediately, rushed on the applicant with iron rod in his hand and assaulted him on his head, due to which, he sustained bleeding injuries on his head.

7. At the same time, the present accused also instigated his supporters and co-accused to assault the applicant and kill him. Fortunately, one Janardan Jagannath Gurav, who is also injured witness with three others came to the rescue of the applicant and, immediately, brought him out of the said premises and then shifted him to Primary Health Centre for medical treatment.

8. While the applicant was under treatment, he lodged F.I.R. with Bhuinj Police Station on the basis of which C.R.No.93/2007 came to be registered under sections 324, 323, 504, 506 read with section 34 of Indian Penal Code against the present accused and two others.

9. After the primary treatment, applicant was referred to civil hospital. However, looking to the injury sustained by him on his head, he was taken to Yashwant Neuro Surgery and Trama Centre, Satara. He was continuously under treatment in the said hospital from 28thJune, 2007 to 4th July, 2007 i.e. almost for a period of seven days. During the course of investigation, it was revealed that beside applicant two others were also injured in the aforesaid incident.

10. On 4th July, 2007, the present accused, respondent No.1 herein filed an application for grant of anticipatory bail before the learned Sessions Judge, Satara being Criminal Misc. Application No.355/2007 along with application (Exh.4) to seek interim anticipatory bail. On the same day, learned

Sessions Judge was pleased to grant interim anticipatory bail to the present accused. The application of the accused seeking pre-arrest bail was opposed by respondent No.2- State. After hearing both side, vide order dated 31st July, 2007, the learned Sessions Judge was pleased to allow the application of the accused and confirmed the interim order of anticipatory bail granted in favour of the accused, by-passing regular Court, without limiting duration thereof.

11. It appears that learned Sessions Judge was of the view that the present accused was involved in the offence out of political vendetta. That the applicant/ complainant was not assaulted by anybody but he sustained injuries at the time of pelting stones by his supporters. According to him, prosecution was not to suffer any prejudice as such Court below confirmed the interim order of pre-arrest bail granted in favour of the present accused.

12. The complainant has now moved the present application for cancellation of anticipatory bail contending that the order granting bail is erroneous as the same is based on perfunctory reasons and that

the custody of the accused is necessary.

Rival Submissions :

13. Mr.Jamdar, learned counsel for the applicant submits that the applicant has sustained grievous injury caused by dangerous weapon on the vital part of the body like head. Three other witnesses have also sustained injuries in the aforesaid assault. That dangerous weapons like iron rod and knives were used in assaulting the applicant. According to him, looking to the injuries sustained by the applicant and others on the vital part of the body, clearly show that the accused persons have attempted to commit murder of the present applicant. It was a well planned act of all the accused with common intention.

14. The learned counsel for the applicant submits that the applicant/ complainant. who has suffered injuries, has attributed specific role to respondent Nos.1 and 2. That he had no reasons to falsely implicate the present accused. He, thus, submitted that in such circumstance, considering the gravity of the offence and consequence of granting liberty to the accused persons, the learned Sessions Judge should not

have granted pre-arrest bail to the accused. He, thus, prayed that pre-arrest bail granted in favour of present accused be cancelled.

15. Mr.Jamdar, relying upon the judgment of the Apex Court in the case of **Sallauddin Abdulsamad Shaikh v. State of Maharashtra**, AIR 1996 SC 1042 and some other judgments taking similar view, urged that the learned Sessions Judge could not have granted anticipatory bail for an unlimited period. He submits that as per the law laid down by the Apex Court, anticipatory bail should be for a limited duration only and, ordinarily, on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted. He, thus, tried to find fault with the impugned order even on this count in addition to the grounds raised and already referred to hereinabove.

16. Mr.Jamdar also relied upon the judgment of the Apex Court in the case of **C.B.I. v. Anil Sharma**, **(1997) 7SCC 187** and went on to urge that custodial

interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under section 438 of Cr.P.C. According to her, the Apex Court has further observed that effective interrogation of the suspected person is of tremendous advantage in disintering many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere denial. He also placed reliance on judgment of the Apex Court in the **Himanshu Desai v. State, 2006 (1) Cr.L.J. 186 (SC).**

17. Per contra, Mr.Gupte, learned senior counsel appearing for respondent No.1- accused submits that the applicant/ complainant has not approached this Court with clean hands. He submits that the applicant has filed complaint with malafide intention and with an ulterior motive to falsely involve him in the alleged offence. out of political vendetta. He submits that the investigating officer has recorded statements of various persons and witnesses. That the

investigation is complete. He submits that custodial interrogation of the present accused is not necessary and that there is no chance of absconding of the present accused. He, thus, submits that learned Sessions Judge has rightly granted pre-arrest bail in favour of the present accused. He placed reliance on the judgment of the Apex Court in the case of **Bhagirat Singh v. State of Gujarat,** 1984 (1) SCC 284; wherein the Apex Court has laid down the principles reading as under (H.N.):

> " Very cogent and overwhelming circumstance are necessary for an order seeking cancellation of the bail. Even where a prima facie case is established, the approach of the court is the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence.

18. With the aforesaid legal foundation, Mr.Gupte, went on to urge that the order granting anticipatory bail can be set aside or recalled only on the ground of lack of jurisdiction or breach of condition or misuse of opportunity. According to him, none of these grounds are available in the present case for which the bail can be cancelled. She further

submitted that the order has been passed by the court of competent jurisdiction and it is not the case of the prosecution that discretion has been transgressed by the Sessions Court to unconstitutional level lacking jurisdiction warranting interference at the hands of this Court. He also stated that respondent No.1- accused is ready to co-operate with the investigating officer without any reservation.

19. Mr.Gupte also pressed in to service another judgment of the Apex Court in the case of **Joginder Kumar v. State of Uttar Pradesh, 1994 (4) SCC 260** and went on to submit that no arrest can be made only because it is lawful for the police officer to do so. The arrest and detention in the police lockup of a person can cause incalculable harm to the reputation and self esteem of a person. He, thus, urged that no case is made out by the applicant for cancellation of anticipatory bail granted by the Sessions Court in favour of the accused as such the present application is liable to be dismissed.

CONSIDERATION:
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20. Let me first consider the parameters for grant of pre-arrest bail.

PARAMETERS:

21. The Apex Court in the case of **Bharat Chaudhary v. State of Bihar**, (2003) 8 SCC 77, observed that the object of Section 438 of the Code is to prevent undue harassment of the accused persons by pretrial arrest and detention. The gravity of the offence is an important factor to be taken into consideration while granting anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the courts concerned while entertaining a petition for grant of anticipatory bail.

22. In the case of **Adri Dharan Das v. State of West Benal**, (2005) 4 SCC 303, the Apex Court said that the power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty, then power is to be exercised under Section 438 of the Code. The power being of important nature it is entrusted only to the higher echelons of

judicial forums i.e.the Court of Session or the High Court. It is the power exercisable in case of an anticipated accusation in non-bailable offences.

23. The Apex Court in the case of **Gurbaksh Singh v. State of Punjab**, AIR 1980 SC 1632, observed as follows:-

> "We would, therefore, prefer to leave the High Court and the Court of Sessions to exercise their jurisdiction under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these Courts to act objectively and in consonance with principles governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the Legislature has conferred upon them, by laying down inflexible rules of general application."

24. The Apex Court, in the case of **State represented by the C.B.I. v. Anil Sharma**, (1997) 7 SCC 187, while emphasizing importance of custodial investigation observed as follows:

> "6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of

> tremendous advantage in disintering many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disintering offences would not conduct themselves as offenders."
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> (Emphasis supplied)

25. In the case of **K.K.Jerath v. Union Territory, Chandigarh**, 1998 Cri.L.J. 2555 it is observed as under:

> "5. We do not wish to enter into any detailed discussion on these legal aspects raised by the learned counsel for the respondents as this Court in the several decisions referred to by the learned counsel for the petitioner has explained the scope of the provisions of Articles 20 (2) and 21 of the Constitution and Section 486 of the Code of Criminal Procedure and their inter-relationship. We may only State in considering a petition for grant of bail necessarily if public interest requires detention of citizen in custody for purpose of investigation could be considered and rejected as otherwise there could be hurdles in the investigation even resulting in tampering of evidence."

(Emphasis supplied)

26. A three Judges Bench of the Apex Court in the case of **Pokar Ram v. State of Rajasthan**, AIR 1985 SC 969 (para 5) observed as under:-

> "Relevant considerations governing the Court's decision in granting anticipatory bail under S. 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher Court and bail is sought during the pendency of the appeal."

27. Similar observation have been made by the Apex Court in the case of **Anil Sharma (supra)** that the consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.

ON MERITS:
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28. Having heard rival parties, having examined the law laid down by the Apex Court, it is, no doubt, true that the Apex Court has repeatedly observed that for seeking cancellation of bail very cogent and

overwhelming circumstances are necessary but essentially, these observations are to be found in the cases wherein the question of cancellation of regular bail was involved.

29. The Apex Court in the case of **State of Gujarat v. Narendra K. Amin**, 2007 ALL MR (Cri) 2936 (SC) was pleased to observe that the Sessions Court while granting anticipatory bail must consider that whether the accused is in a position to influence, induce or coerce witnesses to desist from furnishing relevant information to the investigating agency. The Court should also take into account the need for custodial interrogation of the accused.

30. In the case of **Puran v. Rambilas**, (2001) 6 SCC 338, the Apex Court ruled that one of the ground for cancellation of bail could be where ignoring material and evidence on record and perverse order granting bail in a heinous crime and that too without giving any reasons is passed. Such an order would be against the principles of law. Interest of Justice would also require that such a perverse order be set aside and bail be cancelled. The Apex Court further observed that arbitrary and wrong exercise of

discretion by the trial Court has to be corrected. It further reiterated law laid down in the case of **Gurucharan Singh v. State (Delhi Admn.)**, AIR 1978 SC 179. In this case, it has been observed by the Apex Court that under section 439(2), the approach should be whether the order granting bail was vitiated by any serious infirmity for which it was right and proper for the High Court, in the interest of justice, to interfere.

31. Bearing in mind the law laid down by the Apex Court, let me turn to another contention that pre-arrest protection ought to have been granted for a limited period under section 438. In my considered view, there is substance in the submission of learned counsel for the applicant. The Sessions Court has not taken into account all the facts and circumstances involved in the case. On the contrary, pre-arrest bail order is passed even before the investigation could take proper shape. Hence Court below should not have granted permanent pre-arrest bail.

32. It is needless to mention that the facility, which section 438 gives, is generally referred to as

"anticipatory bail". Any order of bail can be effective only from the time of arrest of the accused. Manifestly, there is no question of release on bail unless the accused is arrested and, therefore, it is only after the arrest is effected the order becomes operative. The power exercisable under section 438 is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty then power is to be exercised under section 438.

33. Number of judgments have highlighted that sections 438 and 439 of Cr.P.C. operate in different fields. It is clear from the bear reading of the provisions that for making an application in terms of section 439 a person has to be in custody. Section 438 deals with "Direction for grant of bail to person apprehending arrest."

34. Keeping the aforesaid legal provisions in mind and Law leading to cancellation of bail, one more deep routed settled principle of law flowing from the judgment of the Apex Court in the case of **Sallauddin**

(supra); needs to be taken note of; wherein the Apex Court has observed as under:

> "Anticipatory bail is granted in anticipation of arrest in non-bailable cases, but that does not mean that the regular court, which is to try the offender, is sought to be bypassed and that is the reason why the High Court very rightly fixed the outer date for the continuance of the bail and on the date of its expiry directed the petitioner to move the regular court for bail. That is the correct procedure to follow because it must be realised that when the Court of Sessions or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and, therefore, it is not informed about the nature of evidence against the alleged offender. It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted."

35. It is, no doubt, true that as per the judgment in **Bhagirathsingh** (supra), as laid down by the Apex Court, the Court is not powerless to grant bail for the entire period of trial but the recent development of law leans in favour of granting limited bail, especially, when the investigation is at the premature stage. The very same aspect has been highlighted in **Adri Dharan Das** (supra).

36. In the above view of the principles of law as set out and the peculiar factual scenario involved, I direct that during the period of eight weeks from today, the respondent No.1- accused shall surrender before the regular Court and shall seek regular bail which the Court below shall be free to decide in accordance with law in the light of various cases referred herein.

37. I make it clear that I did not express any opinion on the merits of the case. When the bail application would be moved in terms of section 439 of Cr.P.C. before the concerned Court, the same shall be considered in its proper perspective in accordance with the law laid down by the Apex Court in the matter of grant of bail and importance of custodial interrogation. If the application for bail is moved, the concerned Court shall do well to dispose it of with expeditious despatch provided sufficient advance notice is given to the State.

38. In the result, application is partly allowed in terms of this order.

JUDGE